

## § 784.115

U.S. 572; *Mitchell v. Stinson*, 217 F. 2d 210; *Mitchell v. Hunt*, 263 F. 2d 913; *Puerto Rico Tobacco Marketing Co-op. Ass'n. v. McComb*, 181 F. 2d 697). Thus, the workweek is the unit of time to be taken as the standard in determining the applicability to an employee of section 13(a)(5) or section 13(b)(4) (*Mitchell v. Stinson*, supra). An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It may begin at an hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted. If in any workweek an employee does only exempt work he is exempt from the wage and hours provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in one workweek and not the next (see *Mitchell v. Stinson*, supra). But the burden of effecting segregation between exempt and nonexempt work as between particular workweeks is on the employer (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245).

### **§ 784.115 Exempt and noncovered work performed during the workweek.**

The wage and hours requirements of the Act do not apply to any employees during any workweek in which a portion of his activities falls within section 13(a)(5) if no part of the remainder of his activities is covered by the Act. Similarly, the overtime requirements are inapplicable in any workweek in which a portion of an employee's activities falls within section 13(b)(4) if no part of the remainder of his activities is covered by the Act. Covered activities for purposes of the above statements mean engagement in commerce, or in the production of goods for commerce, or in an occupation closely related or directly essential to such production or employment in an enterprise engaged in commerce or in the production of goods for commerce, as explained in §§ 784.17 through 784.19.

## 29 CFR Ch. V (7–1–10 Edition)

### **§ 784.116 Exempt and nonexempt work in the same workweek.**

Where an employee, during any workweek, performs work that is exempt under section 13(a)(5) or 13(b)(4), and also performs nonexempt work, some part of which is covered by the Act, the exemption will be deemed inapplicable unless the time spent in performing nonexempt work during that week is not substantial in amount. For enforcement purposes, nonexempt work will be considered substantial in amount if more than 20 percent of the time worked by the employee in a given workweek is devoted to such work (see *Mitchell v. Stinson*, 217 F. 2d 210). Where exempt and nonexempt work is performed during a workweek by an employee and is not or cannot be segregated so as to permit separate measurement of the time spent in each, the employee will not be exempt (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245; *Walling v. Public Quick Freezing and Cold Storage Co.*, 62 F. Supp. 924).

### **§ 784.117 Combinations of exempt work.**

The combination of exempt work under sections 13(a)(5) and 13(b)(4), or one of these sections with exempt work under another section of the Act, is permitted. Where a part of an employee's covered work in a workweek is exempt under section 13(a)(5) and the remainder is exempt under another section which grants an exemption from the minimum wage and overtime provisions of the Act, the wage and hours requirements are not applicable. If the scope of the exemption is not the same, however, the exemption applicable to the employee is that provided by whichever exemption provision is more limited in scope unless, of course, the time spent in performing work which is nonexempt under the broader exemption is not substantial. For example, an employee may devote part of his workweek to work within section 13(b)(4) and the remainder to work exempt from both the minimum wage and overtime requirements under another section of the Act. In such a case he must receive the minimum wage but is not required to receive time and one-half for his overtime work during that week (*C.F. Mitchell v. Myrtle Grove*